IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Smt. Alka Dadhich Vs. Ajay Dadhich
(D.B. Civil Misc. Appeal No.1825/2006)

D. B. Civil Misc. Appeal under Sec.19 of the Family Courts Act,1984 against the judgment and decree dated 12-5-2006 in Case No.328/2001 passed by Ms. Neerja, RHJS, Judge Family Court Ajmer.

Date of Judgment: April 30, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. J.P.Goyal, for the appellant.

Mr. Kapil Mathur, for the respondent.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

The appellant wife in this appeal impugns the decree for divorce dated May 12, 2006 of learned Family Court Ajmer whereby the petition of respondent husband filed under section 13 of the Hindu Marriage Act,1955 (for short `the Act') was allowed, marital ties were snapped and it was indicated that the appellant wife was guilty of cruelty.

2. As per the averments made in the petition the marriage between the appellant wife (or short `wife') and respondent husband (for short `husband') took place on December 2, 1999. After honeymoon at Mount Abu till December 23, 1999 the wife went with husband to Sagar (MP) where the husband was deployed as Lieutenant and wife stayed there till February,2000. Thereafter the wife became pregnant and left Sagar for Bhilwara with her brother and mother against the will of husband. In

April,2000 the husband came on leave and took the wife to Ajmer where both resided together till May 6, 2000. After the husband left Ajmer for joining his duty leaving the wife with the parents of husband, the wife started behaving in a strange manner. She never used to cover her head with sari, started sitting in Varandah only in Peticoat-blouse and used to talk in filthy language. On May 30, 2000 the wife beat mother of husband and threatened the parents of husband to implicate them in a false case. She compelled her father in law to leave her to Bhilwara with two FDRs of Rs.50,000/- each on March 9, 2001. The husband telephoned her and made a request to come Ajmer from Bhilwara but she defied the request and used abusive language. She caused mental agony to husband by making complaints to the Superior Officers of husband about the behaviour and character of husband. At sagar also the behaviour of wife was cruel. She used to defy the directions of husband. As and when the friends of husband visited his house, the wife refused to serve tea and snacks to them. She used to threaten the husband that she would commit suicide and implicate husband in false cases. The husband and his parents made solemn endeavours to live with the wife in a peaceful manners but their all efforts were in vein.

3. In reply to the petition the wife denied the allegations levelled against her. It was pleaded by her that she never quarrelled with family members of the husband. She stated that she was very sincere towards her husband and in-laws. Being highly qualified she was inspired by her in-laws to take RAS Examinations and in pursuance to the inspirations of her in-laws and with the consent of her husband she had gone to Bhilwara for RAS Examinations. She was subjected to cruelty for demand of dowry and her

signatures were obtained on a blank stamp paper regarding which complaint was sent to Army Officers. Complaints were sent by wife under compelling circumstances. The husband and his parents treated her cruelly. The husband never made any attempt to keep her with him. The husband demanded a dowry of Rs.1 lac along with Maruti car. On June 3, 2001 through telephone the husband intimated her to perform other marriage in case of not fulfilling the demand. The wife was always inclined to maintain conjugal relations with the husband but he was not inclined to remain with her.

4. Learned Family Court framed as many as four issues out of the pleadings of the parties thus:-

> (i) Whether the behaviour of wife can be termed cruel with her husband as per the facts stated in the petition?
> (ii) Whether the behaviour of husband and his parents was cruel with the wife as per the facts stated in the reply?
> (iii) Whether the husband was entitled to decree dissolution of marriage solemnised on December 2, 1999?
> (iv) Relief?

5. The respondent husband examined himself as Aw.1 and in support of his evidence produced Chandra Kala (Aw.2) and Jagdish Prasad Dadhich (Aw.3). The appellant wife appeared as Naw.1 and examined Om Prakash Sharma (Naw.2), Yogesh Kumar Joshi (Naw.3) and Sidarth Singh Hada (Naw.4).

6. Learned Family Court decided all the issues against appellant wife and granted decree of divorce in favour of respondent husband as indicated above.

7. We have heard learned counsel for the parties and scanned the

material on record.

8. The question that requires consideration is whether the allegations made by the respondent husband do constitute cruelty. Clause (1a) of Section 13 of the Act specifies cruelty as one of the grounds of divorce. In so far as relevant Section 13 reads thus:-

> "(1) Any marriage solemnised, whether before or after commencement of the Act may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-
> (ia) has after the solemnization of the marriage treated the petitioner with cruelty."

9. Cruelty may be physical as well as mental. "Mental Cruelty" cannot be defined exhaustively. Lord Reid in Collins Vs. Gollins (1964 AC 644) observed as under:-

> "No one has ever attempted to give a comprehensive definition of cruelty and I do not intend/ try to do so. Much must depend on the knowledge and intention of the respondent, on the nature of his (or her) conduct, and on the character and physical or mental weakness of the spouses, and probably no general statement is equally applicable in all cases except the requirements that the party seeking relief must show actual or probable injury to life, limb or health."

10. Lord Pearce also adopted the view of Lord Reid and indicated thus:-

> "It is impossible to give a comprehensive definition of cruelty, but when reprehensive conduct or departure from normal standards of conjugal kindness causes injury to health or an apprehension of it, I think, cruelty if a reasonable person, after

> taking due account of the temperament and all the other particular circumstances would consider that the conduct complained of is such that this spouse should not be called on to endure it.... The particular circumstances of the home, the temperament and emotions of both the parties and their status and their way of life, their past relationship and almost every circumstance that attends the act or conduct complained of may be relevant."

11. Lord Pearce and Lord Reid referred the words injury to life, limb or health in the context of the requirement of the law of divorce prevailed in United Kingdom. This requirement is no longer present in Section 13(1)(ia). Decree of divorce could not be sought on the ground of cruelty prior to 1976. It was after the Hindu Marriage Laws (Amendment) Act 1976 came to be enacted that the cruelty was made a ground for divorce. Cruelty mentioned in clause (ia) is now a ground for divorce as well as for judicial separation under section 10.

12. In V.Bhagat Vs. D.Bhagat (AIR 1994 SC 710) `Mental Cruelty' has been defined by the Apex court as under:- (Para 17)

> "Mental cruelty in s.13(1)(ia) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living

apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made."

13. In Sobha Rani Vs. Madhukar Reddi (1988)1 SCC 105 was the case wherein Their Lordships of the Supreme Court had occasion to interprate Section 13(1)(ia) thus:-

"Section 13(1)(ia) uses the words "treated the petitioner with cruelty". The word "cruelty' has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of oen which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the Court will have no problem to determine it. It is a question of fact and degree. If it is mental, the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn up by taking into account the nature of the conduct and its effect on the complaining spouse. There may however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injuries effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

It will be necessary to bear in mind that there has been marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse make complaint about the treatment

of cruelty by the partner in life or relations, the Court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. We, the judges and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties. It would be better if we keep aside our customs and manners."

14. In A. Jayachandra Vs. Aneel Kaur 1(2005) DMC 111 (SC) the Hon'ble Supreme Court propounded thus:- (para 12)

> "The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce... Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day to day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent."
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> (Emphasis Supplied)

15. In the light of the principles enunciated herein above we may now examine whether the allegations made by the respondent husband in the petition and the evidence adduced in support of the allegations amount to mental cruelty within the meaning of sub clause (ia). For the sake of convenience we may divide the allegations into following sub heads:-

(i) Conduct of wife with the husband and his parents.

(ii) False complaints to the superior officers about the character and behaviour of husband.

(iii) Criminal case lodged by the wife against husband and his parents.

CONDUCT:

16. It is averred by the husband that after honeymoon trip to Mount Abu they returned to Ajmer and from Ajmer they went to Sagar (MP) where husband was deployed as Lieutenant where they stayed together till February,2000. In the meanwhile the wife became pregnant and she left Sagar for Bhilwara with her mother and brother against the wish of husband. The husband, in April,2000 went to Bhilwara and took the wife to Ajmer. On completion of leave the husband went to Sagar leaving the wife at his parental house. The wife misbehaved with the parents of the husband. She used to wander bare-headed in front of the parents and sit in open varandah only in petticoats. She used to talk to her in-laws in filthy language. At Sagar also the wife used to defy directions of husband. As and when the friends of husband visited the house, the wife used to decline to serve them tea and snacks. The wife used to say that she belonged to a very rich family and she would implicate the husband and his entire family in false cases. The wife was also in the habit of threatening the parents of the husband to commit suicide after jumping from roof of the house. On May 30, 2000 the wife made attempt to beat the mother of husband. The husband and his parents were not informed about the birth of husband's son. The wife declined to reside at Ajmer and used abusive language on telephone. Ex.18 is the letter written by the wife. This letter was contained in the envelop Ex.19, which bears seal of Post Office Ajmer dated February 16, 2000. In the letter the

wife stated to her in-laws thus:-

> "मम्मी आपसे तथा पापा से अपने किये के लिए माफी चाहती हूं मैं जानती हूं आप दोनों मुझसे बहुत नाराज हैं लेकिन मम्मी मैंने जानबूझकर गलतियां नहीं की मुझसे अनजाने में गलतियां हुई...।"

COMPLAINTS TO SUPERIOR OFFICERS:

17. In February,2000 the wife made oral complaint to the wives of Colonel Batra and Colonel Bherali that her husband, mother in law and maternal uncle in law made attempt to set her ablaze. She wrote a letter Ex.7 to the Superior Officer of husband wherein she wrote that her husband made attempt to kill her by cooking gas. On June 15, 2001 the wife wrote to the Superior Officer of husband wherein she made allegation against the husband that he had illicit relations with the girls who had studied with him in the College. Pursuant to those letters inquiries were initiated against the husband. The Board conducted inquiry against the husband and the Brigadier in the report Ex.17 gave clean chit to the husband and observed that the wife was in the habit of making false complaints.

CRIMINAL CASE:

18. It appears from the material on record that on November 28, 2004 the wife lodged a criminal case against the husband and his family members on the allegation of demand of dowry and got the husband and his parents detained in the police station.

19. Learned counsel for the appellant wife urged that the allegation levelled by the husband were vague and not sufficient for accepting the prayer for divorce. The evidence was scanty and in no way established

mental cruelty. The accepted factual position shows that relationship between the spouses was smooth except some stray incidents of discord which are normal in any marriage and such normal wear and tear in relationship cannot be a ground for seeking divorce. It was contended that even if it is accepted, for the sake of argument, that marriage has broken down that cannot be a ground to grant a decree for divorce. Reliance is placed on Chetan Das Vs. Kamal Dev (AIR 2001 SC 1709), Kameshwar Rao Vs. G. Jabilli (2002)2 SCC 296 and Shyam Sunder Kohli Vs. Sushma Kohli (2004)8 SCC 166.

20. Having considered the alleged conduct of wife in the background of social status of the parties, their education, physical and mental conditions, customs and traditions we find that it amounts to cruelty. We are satisfied from the material on record that the relationship between the parties had deteriorated to such an extent due to conduct of the wife that it would be impossible for them to live together without mental agony, torture or distress. After dragging the husband and his old parents in to the prison, the wife cannot expect to reconcile the marital ties. Having tied nuptial knot the spouses are supposed to perform social, religious and spiritual duties but in the instant case neither such duties were performed nor did new relationship of love, affection, care and concern between the spouses ever created.

21. For these reasons, the impugned judgment and decree dated May 12, 2006 of the learned Family Court does not call for any interference. The findings arrived at by the learned Family Court being founded on proper and legal appreciation of evidence on record deserve to be upheld and affirmed.

22. Resultantly, the appeal being devoid of merit stands dismissed.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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